

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

CHAD WINTERS

Defendant.

8:09CR81

MEMORANDUM AND ORDER

This matter is before the Court for initial review of a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“§ 2255 Motion”), ECF No. 374, filed by the Defendant, Chad Winters. Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires initial review of a defendant’s § 2255 motion. Rule 4(b) states:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

The Court notes that the Defendant has previously filed two separate § 2255 Motions, ECF No. 298, ECF No. 314, that were each summarily dismissed, ECF No. 299, ECF No. 315. 28 U.S.C. § 2255 provides:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Because Defendant has not sought certification for his successive § 2255 Motion from a panel of the United States Court of Appeals for the Eighth Circuit, the § 2255 Motion will be dismissed.

THEREFORE, IT IS ORDERED:

1. That the Court completed initial review of the Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion");
2. For the reasons stated above, the § 2255 Motion, ECF No. 374, will be summarily dismissed;
3. The Clerk will mail a copy of this Memorandum and Order to the Defendant and the Defendant's last known address.

Dated this 26th day of May, 2017.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge